



Bath & North East Somerset Local Plan Partial Review

Matter 1: Procedural/Legal Requirements

Statement on behalf of Redrow Homes Ltd.

June 2022.




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1. Introduction

- 1.1 Bluefox Planning is instructed by Redrow Homes Limited ('Redrow') in respect of the Bath and North East Somerset Local Plan Partial Update ('LPPU'). Redrow has participated fully in the previous stages of the LPPU process and has, over a period of years, been involved in constructive dialogue with senior Officers at the Council in respect of its land interest at Whitchurch, south east Bristol.
- 1.2 This Statement sets out Redrow's position on those questions raised by the Inspector relating to the Duty to Cooperate (DtC) and Sustainability Appraisal (SA) responds to the Inspector's questions on this matter, that is to say:
- **Question 1:** Is there clear evidence that the Council has engaged constructively, actively and on an ongoing basis with neighbouring authorities and prescribed bodies in accordance with section 33A of the 2004 Act in respect of strategic matters with cross-boundary impacts considered through the preparation of the Plan?;
 - **Question 2:** What are the specific outcomes of the DtC?
 - **Question 3:** Is the SA adequate?
 - **Question 4:** Has the SA been undertaken on the basis of a consistent methodology and is the assessment robust?
 - **Question 5:** Did the Council, through an iterative SA process, take into account reasonable alternatives and has sufficient reasoning been given for the rejection of alternatives?
- 1.3 It is acknowledged that other procedural/legal issues are raised as part of this Matter and we will contribute to discussions on these as the Examination within the parameters of our representations at Regulation 19 stage

2. Context – Duty to Cooperate

- 2.1 The National Planning Policy Framework (NPPF) sets out clearly the importance of the DtC in the plan making process. It states, for example:

“Effective and on-going joint working between strategic policy-making authorities and relevant bodies is integral to the production of a positively prepared and justified strategy. In particular, joint working should help to determine where additional infrastructure is necessary, and whether development needs that cannot be met wholly within a particular plan area could be met elsewhere.” (NPPF para 26 – Blue Fox emphasis).

- 2.2 The NPPF also states:

“In order to demonstrate effective and on-going joint working, strategic policymaking authorities should prepare and maintain one or more statements of common ground, documenting the cross-boundary matters being addressed and progress in cooperating to address these. These should be produced using the approach set out in national planning guidance, and be made publicly available throughout the plan-making process to provide transparency.” (NPPF para 27 – Blue Fox emphasis).

- 2.3 As set out in our representations to the Regulation 19 consultation, it is notable that there is NOT a statement of common ground with Bristol City Council or North Somerset Council. The same observation is made by the Inspector in question 10 of EXAM01.

- 2.4 National Planning Practice Guidance (PPG) states that a statement of common ground is:

“...a written record of the progress made by strategic policy-making authorities during the process of planning for strategic cross-boundary matters. It documents where effective co-operation is and is not happening throughout the plan-making process, and is a way of demonstrating at examination that plans are deliverable over the plan period, and based on effective joint working across local authority boundaries. In the case of local planning authorities, it also forms part of the evidence required to demonstrate that they have complied with the DtC.” (PPG Paragraph: 010 Reference ID: 61-010-20190315).

- 2.5 The Council’s response to question 10 of EXAM01 appears to be that no strategic cross-boundary issues with Bristol City Council arose during the preparation of the LPPU and therefore a statement of common ground with that Authority was not required.

- 2.6 For reasons set out in our Regulation 19 representations, we find this implausible particularly in respect of the supply of new homes where it is publicly acknowledged

that Bristol cannot meet its own needs and will rely on adjoining Authorities including Bath and North East Somerset.

- 2.7 The NPPF also states that for a Plan to be sound, it must also be “positively prepared” including:

“..providing a strategy which, as a minimum, seeks to meet the area’s objectively assessed needs; and is informed by agreements with other authorities, so that unmet need from neighbouring areas is accommodated where it is practical to do so and is consistent with achieving sustainable development” (NPPF paragraph 35 a- Blue Fox emphasis).

- 2.8 It is difficult to accept therefore that the supply of new homes is not a strategic cross-boundary matter in the context of the NPPF and PPG. Whilst the Council may seek to suggest that such matters are to be dealt with through the West of England Combined Authority Spatial Development Strategy (SDS) and/or a future full review of the B&NES Local Plan this, in our opinion, abdicates responsibility to a future date with no commitment on timescales.
- 2.9 The high-risk nature of such an approach has been highlighted very recently by the fact that work on the SDS has been halted and is not being progressed by the West of England Combined Authority (WECA). Metro Mayor Dan Norris has written to the Department for Levelling Up, Housing and Communities to explain that he has asked officers to stop work as unanimous agreement on the plan by the WECA Authorities has not been reached.

3. Response to Question 1 & 2

3.1 Question 1 specifically asks whether there is “...clear evidence that the Council has engaged constructively, actively and on an ongoing basis with neighbouring authorities...” (Blue Fox emphasis). At this point, it is important to note that the NPPF is clear that this engagement should have taken place from the very start of the process, that is to say at the point at which the Council took the decision to undertake the Partial Update. In respect of Statements of Common Ground, the PPG states:

“Statements need be prepared and then maintained on an on-going basis throughout the plan making process. As a minimum, a statement needs to be published when the area it covers and the governance arrangements for the cooperation process have been defined, and substantive matters to be addressed are determined....”

Authorities should have made a statement of common ground available on their website by the time they publish their draft plan, in order to provide communities and other stakeholders with a transparent picture of how they have collaborated....” (PPG Paragraph: 021 Reference ID: 61-021-20190315 – Blue Fox emphasis).

3.2 In respect of the DtC, the PPG states:

“The local plan examination will first assess whether a local planning authority has complied with the DtC and other legal requirements. The Inspector will use all available evidence including statements of common ground, Authority Monitoring Reports, and other submitted evidence (such as the statement of compliance prescribed by Planning Inspectorate’s examination procedure guidance) to determine whether the duty has been satisfied.

As the DtC relates to the preparation of the plan it cannot be rectified post-submission....” (PPG Paragraph: 031 Reference ID: 61-031-20190315)

and also:

“Plans are required to set out strategic policies that address strategic priorities. These may include cross-boundary matters, including issues such as whether an authority is able to meet all its housing need. Given the direct implications of plan reviews in enabling such matters to be addressed through the updating of policies, it is important that the bodies subject to the Duty to Co-operate have an opportunity to engage in both how plan reviews are undertaken and the review of the plan. Engagement with neighbouring authorities and prescribed bodies needs to occur before a final decision on whether to update policies in a plan is made, as such engagement may influence that decision.” (PPG Paragraph: 075 Reference ID: 61-075-20190723 – Blue Fox emphasis).

- 3.3 It is therefore clear that the DtC is triggered at the point at which a Council resolves to review/update a local plan, be that a full review or, as in this case, a partial update. In our view, this did not happen in respect of the LPPU for the reasons set out below.
- 3.4 Paragraph 7.4 of EXAM1A states that the potential for a LPPU was discussed in “*late 2019/early 2020*” with WECA and the three West of England Unitary Authorities. Paragraph 7.4 also refers to Appendix 3 of EXAM1B which is a report addressing the concerns of the Heads of Planning & Directors. Subsequently, paragraph 7.5 (EXAM 1A) refers to Appendix 4 of EXAM1B which sets out the “*conclusions*” of the discussions that had taken place. We make the following comments on these documents.
- 3.5 Appendix 3 of EXAM1B (“Note for Heads of Planning 17th January 2020 Assessment of a Partial Review of the B&NES Local Plan”) appears to be concerned primarily with the principle of the LPPU rather than its scope or any discussion on specific cross boundary issues requiring joint working. It also appears to be an internal “Note” that was not at that time in the public domain. It does not, in our opinion, meet the requirements of NPPF paragraphs 26 and 27 nor the PPG advice set out previously. Indeed, it is a response to the discussion rather than a record of the discussions themselves.
- 3.6 Appendix 4 of EXAM1B is an internal email from the Head of Regional Housing and Planning at WECA to senior Officers at the District and Unitary Authority and is, again, concerned with the principle of the LPPU rather than its scope. There is no mention of either of these Appendices in those Statements of Common Ground that do exist on the LPPU or indeed in CD-SD031 “DtC Note and Statement of Common Ground” (August 2021).
- 3.7 Paragraphs 6.1 and 7.6 of EXAM1 confirm that B&NES formally determined to begin preparation of the LPPU in March 2020 with a report to Cabinet. Paragraph 7.6 also confirms that the Cabinet report “*....made clear the precise function and scope of the LPPU*”. Further to our comments previously, there is no apparent evidence of what input the DtC bodies had in terms of defining the scope of the LPPU.
- 3.8 Likewise, those Statements of Common Ground that have been prepared are dated August 2021, that is to say, over a year after the decision to commence preparation. It is a statement of fact that they were not available when the Commencement Document was published (April 2020), or when the regulation 18 Consultation was undertaken (January 2021).
- 3.9 They are also confined to discussions that began in January 2021 and we note that question 8 of EXAM01 seeks clarification of the evidence of cooperation between the DtC bodies prior to that time. In response the Council at paragraph 8.2 of EXAM1A states:
- “Before January 2021, the primary DtC activity was through consultation on the Commencement document in April 2020 when all adjoining authorities were asked for their views on the purpose of the LPPU, including its proposed scope, its relationship*

to other plans, the process of preparing it and programme for its preparation. In particular, feedback was invited on the proposed content of the LPPU. All the DtC bodies were sent notification of consultation at each preparation stage and invited to submit comments (see Appendix 6)."

- 3.10 Appendix 6 is the formal notification of the consultation on the Commencement document in January 2021. It is not, however, evidence that the DtC bodies had any input into the scope and content of the Commencement document prior to its publication. On that basis, it is important that the "DtC" and the need for "*effective and on-going joint working between strategic policy-making authorities and relevant bodies*" (NPPF paragraph 26) is not conflated with "consultation".
- 3.11 As stated previously, our concern on DtC centres on how it has been applied in respect of Bristol City Council. Whilst we note that there have been informal officer discussions these are not evidenced and cannot be considered to represent effective and joint working between the two Authorities.
- 3.12 It is noted that paragraph 10.1 of EXAM01 offers the view that no strategic cross boundary matters arose during the preparation of the LPPU but must question how this conclusion was reached; that is to say, was it the product of the "informal" officer discussions? Relevant to our point at paragraph 3.10 above, we note that paragraph 10.1 again refers to the fact that the Authority was "consulted" twice on the LPPU.
- 3.13 The one fact that can be accepted is that there is not a Statement of Common Ground relating to the LPPU between B&NES and Bristol City Council. We note that, for example, the Statement of Common Ground with South Gloucestershire (CD-SD032) deals with the issue of housing land supply and concludes that this is not a cross boundary issue (CD-SD032 paragraph 3.7 refers). No similar statement in a Statement of Common Ground exists in respect of Bristol City Council. Likewise, CD-SD032 states at paragraph 4.1 that:

"This Statement of Common Ground is an iterative document, drafted at this stage for the purposes of the B&NES Local Plan Partial Update. Engagement and discussions will also inform the preparation of the Councils' respective Local Plans. This engagement will be recorded in future iterations of the SoCG. While at this time there are no specific issues that cannot be agreed identified from the Partial Update, it will be important that discussion of cross boundary issues continue under the DtC and inform further development of the local authorities [SIC] development plans." (Blue Fox emphasis).

Paragraph 4.2 further states:

"In the event that there are any changes in circumstances from those outlined in this SOCG, then these will be brought to the attention relevant officers and Members any amendments will be agreed accordingly." (Blue Fox emphasis).

3.14 Whilst we have noted that CD-SD032 was only available in August 2021, that is to say, not at the point that the LPPU was first published, it nevertheless sets out a commitment to on-going joint working between the Authorities. In the absence of a Statement of Common Ground, no such documented commitment is available for Bristol City.

3.15 Paragraph 10.1 of EXAM1A attempts to deal with this issue by stating:

“Both Bristol and North Somerset have subsequently confirmed to B&NES that the preparation of the LPPU raised no strategic, cross boundary issues warranting a SoCG (Appendix 8).” (Blue Fox emphasis).

3.16 This subsequent confirmation is in the form of an email from the Director, Development of Place at Bristol City Council which was, in turn, solicited by an email from the Head of Planning at B&NES. Both emails are dated 1st March 2022 and should be considered in the context of the PPG position that *“As the DtC relates to the preparation of the plan it cannot be rectified post-submission....”* (PPG Paragraph: 031 Reference ID: 61-031-20190315).

3.17 Nevertheless, we would draw attention to the statement in the email from Bristol City Council that:

“BCC has not formally requested that any contribution be made to meeting any element of unmet housing need attributed to Bristol by the standard method. This is on the basis that these matters are more appropriately addressed through the SDS process. It is therefore critical that the constituent authorities continue to work closely to allow the strategic plan to move forwards towards adoption with publication of the SDS for formal representation taking place in the late Spring/early Summer 22 as set out in the published timeline. This is because in its absence, it would fall to the respective Local Plans to address such matters under the DtC.” (Blue Fox emphasis).

3.18 As stated previously, work on the SDS has subsequently ceased therefore the final sentence of the email becomes extremely pertinent as it effectively confirms that housing need is a cross boundary matter.

4. Conclusions on Duty to Cooperate

4.1 Based on the above, Redrow considers that there is not sufficient and clear evidence that the Council has engaged constructively, actively and on an ongoing basis with neighbouring authorities and prescribed bodies in accordance with section 33A of the 2004 Act in respect of strategic matters with cross-boundary impacts considered through the preparation of the Plan. This conclusion is based on:

1. The fact that Statements of Common Ground have only been provided since August 2021 and not from the first publication of the LPPU for consultation;
2. There is no Statement of Common Ground between B&NES and Bristol City or, for completeness, between B&NES and North Somerset Council;
3. The absence of the Statements of Common Ground (referred to in (2) above, has been attempted to be justified on the basis that such cross-boundary matters will be covered by the SDS, work on which has now ceased;
4. Correspondence from Bristol City Council (that forms part of the LPPU evidence base) confirms that, in the absence of the SDS, housing need becomes a strategic cross-boundary issue under the DtC; and
5. There is insufficient evidence of effective and on-going joint working between strategic policy-making authorities and relevant bodies as opposed to consultation.

5. Sustainability Appraisal

- 5.1 The Inspector has set three questions in respect of the Sustainability Appraisal. Of these, our response focuses on Question 5 which asks:

“Did the Council, through an iterative SA process, take into account reasonable alternatives and has sufficient reasoning been given for the rejection of alternatives?”

- 5.2 Our response (above) sets out our view that, in the context of the DtC, the LPPU has not addressed the strategic cross-boundary issue of meeting Bristol’s unmet housing in the context that the City Council acknowledges that sufficient capacity does not exist within its own boundaries. The SA process has not considered the potential to assist in meeting these needs as a reasonable alternative to the approach that has been taken.
- 5.3 Our representations at Regulation 19 stage also set out that the approach adopted in the LPPU to providing an additional capacity of 1,200 dwellings is almost entirely focussed Bath and Keynsham. As set out in those representations, there is no apparent evidence that opportunities beyond those identified at an early stage in the LPPU’s development have been considered and/or tested through the SA process.
- 5.4 For example, whilst the Commencement document was not subject to SA, the Options version was in the form of CD-SD045. This document considered two options for addressing housing supply:
- Option 1 – “to allocate about 1,300 dwellings identifies 6 sites in Bath, 3 sites in Keynsham and 1 site in Westfield.
 - Option 2 – “Option 2 to allocate housing sites (even though less than option 1) under the Standard Methodology...” (CD-SD045 P13).
- 5.5 Under Option 1, the identified sites are assessed against the SA objectives, but nowhere is it apparent that any alternatives to the already identified sites have been assessed. The same approach, including the same proposed sites in mirrored in the SA at Regulation 19 stage, for example at page 50 of CD-SD005. Again, no option for assisting in meeting Bristol City’s unmet need is considered.
- 5.6 It is fully recognised that, as a Partial Update, any proposed allocations to meet housing supply requirements must accord with the spatial strategy set out in the adopted Core Strategy and Placemaking Plan (which together comprise the Local Plan) 2016-2036. However, this is not a reason to not test reasonable alternatives that also accord with the spatial strategy, however, there is no evidence that any alternative, sustainably located opportunities have been considered let only sufficient reasoning been given for their rejection.

5.7 In conclusion therefore, and in respect of the Inspector's question 5, it is not considered that the Council has taken into account reasonable alternatives or that sufficient reasoning been given for the rejection of alternatives.